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8 JACOB SILVERMAN,  
9 Plaintiff,  
10 v.  
11 DORSEY LANE, et al.,  
12 Defendants.  
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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 Case No. 18-04510 BLF (PR)

21 **ORDER DIRECTING PLAINTIFF  
TO FILE SUPPLEMENTAL BRIEF;  
SETTING BRIEFING SCHEDULE  
ON MOTION TO REOPEN TIME  
TO FILE AN APPEAL**

22 On June 30, 2020, the Court granted Defendants' motion for summary judgment,  
23 and entered judgment on the same day. Dkt. Nos. 90, 91. Plaintiff filed a notice of appeal  
24 on August 19, 2020, Dkt. No. 93, which was after the 30 days to file a notice of appeal had  
25 expired. *See* 28 U.S.C. § 2107(a). The Ninth Circuit has construed Plaintiff's notice of  
26 appeal as including a motion to reopen the time to appeal pursuant to Federal Rule of  
27 Appellate Procedure 4(a)(6), and remanded the matter to this Court for the limited purpose  
28 of determining if the motion was timely filed, and to rule on the motion. Dkt. No. 96.

Rule 4(a)(6) provides that the district court may reopen the time to file an appeal  
only if the following conditions are satisfied: (A) the court finds that Plaintiff did not  
receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or  
order sought to be appealed within 21 days after entry; (B) the motion is filed within 180

1 days after the judgment or order is entered or within 14 days after the moving party  
2 receives notice under Rule 77(d) of the entry, whichever is earlier; and (C) the court finds  
3 that no party would be prejudiced. Fed. R. App. P. 4(a)(6).

4 The Court finds more information is necessary to determine the timeliness of the  
5 motion and its merit. First of all, Plaintiff states that he received the court's June 30, 2020  
6 order "a month approximately later." Dkt. No. 93 at 1. However, the copy of the order  
7 and judgment which were mailed to Plaintiff were returned as undeliverable on September  
8 10, 2020. Dkt. No. 95. Accordingly, it is unclear how and when Plaintiff received notice  
9 of the court's order, information which is necessary for the Court to determine whether the  
10 180 days or 14 days period applies under subsection (B) of Rule 4(a)(6). Therefore,  
11 Plaintiff shall be required to file a supplemental to the motion to reopen the time to file an  
12 appeal under Rule 4(a)(6), stating specifically how and when he received notice of the  
13 Court's order and judgment. Plaintiff's supplemental shall be filed **no later than fourteen**  
14 (**14**) **days** from the date this order is filed. Because the information should already be  
15 known, no extension of time will be granted with respect to this supplemental briefing.  
16 Plaintiff must serve a copy of his supplemental briefing on Defendants. A failure to file  
17 the supplemental briefing will result in the Court denying the motion as untimely.

18 Defendants shall file opposition to the motion **no later than seven (7) days** from  
19 the date Plaintiff's supplemental brief is filed. Defendants are directed to state whether  
20 they separately served the Court's order and judgement on Plaintiff and the date of service,  
21 and whether they would be prejudiced by reopening the time for filing an appeal. A lack  
22 of response from Defendants shall be construed as the absence of prejudice under Rule  
23 4(a)(6)(C).

24 **IT IS SO ORDERED.**

25 **Dated: December 1, 2020**



BETH LABSON FREEMAN  
United States District Judge

26  
27 Order Directing Pl. to File Suppl. Brief; Briefing Sched.  
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